

45-396

**SURFACE TRANSPORTATION BOARD
SECTION OF ENVIRONMENTAL ANALYSIS**

POST ENVIRONMENTAL ASSESSMENT

ENVIRONMENTAL RECOMMENDATIONS IN STB DOCKET NO. AB- 192 (Sub-No. 2X)

January 18, 2007

ABANDONMENT TYPE

The time for comments on the Environmental Assessment (EA) has expired in this:

(X) Notice of Exemption () Petition for Exemption () Regulated Abandonment

() **NO NEW COMMENTS WERE RECEIVED**

(X) **NEW COMMENTS WERE RECEIVED**

SEA served an Environmental Assessment (EA) for this proceeding on December 29, 2006 for public review and comment. In the EA, SEA recommended one environmental condition and concluded that the proposed action would not significantly impact the quality of the human environment.

Comments on the EA

SEA received comments from the Alabama Department of Environmental Management (ADEM) after issuance of the EA (see attachment). According to Mr. Ron Johnson of the Permits and Services Division, the Birmingham Southern Railroad Company (BSRC) would be required to ensure that all salvage activities associated with the abandonment are in compliance with the permit requirements of the National Pollutant Discharge Elimination System (NPDES) for stormwater discharges. In addition, the railroad may be required to install Best Management Practices prior to initiating salvage activities in order to minimize the release of pollutants to surface waters. SEA will therefore add two conditions that require the railroad to consult with ADEM prior to initiating salvage activities.

Conclusion

CONDITIONS

The EA comment period has ended. Accordingly, SEA recommends that the conditions recommended in the EA, as well as the additional conditions recommended in this document, should be imposed upon any decision granting abandonment authority. The combined conditions are:

1. To ensure appropriate consideration of the National Pollution Discharge Elimination System (NPDES) requirements, BSRC shall consult with the Alabama Department of Environmental Management (ADEM) prior to commencement of any salvage activities and shall comply with the reasonable NPDES requirements.

2. ADEM states that Best Management Practices may be required for any land disturbance associated with salvage activities in accordance with the ADEM Administrative Code Rule 335-6-12-.02(r). Accordingly, prior to commencement of any salvage activities, the Birmingham Southern Railroad Company (BSRC) shall consult with ADEM regarding its land disturbance requirements and shall comply with its reasonable requirements.
3. In the event the Birmingham Southern Railroad Company (BSRC) does not sell the line for continued rail use and decides to salvage the line, prior to beginning any salvage activities, BSRC shall reinitiate the consultation process pursuant to Section 106 of the National Historic Preservation Act, 16 U.S.C. § 470, and retain its interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures, and objects within the project right-of-way (the Area of Potential Effect) that are eligible for listing or listed in the National Register of Historic Places until completion of the Section 106 process. BSRC shall report back to the Surface Transportation Board's (Board) Section of Environmental Analysis regarding any consultations with the State Historic Preservation Officer and any other Section 106 consulting parties that have been identified. BSRC may not initiate any salvage activities related to abandonment (including removal of tracks and ties) until the Section 106 process has been completed and the Board has removed this condition.

If the above conditions are imposed, SEA believes that the proposed action will not significantly affect the quality of the human environment.

SEA CONTACT: Diana Wood - 202-565-1552 

Attachment

ADEM

#E1-2665
12/2



ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

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ONIS "TREY" GLENN, III, P.E.

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January 5, 2007

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RE: Environmental Assessment, Jefferson County, Alabama
Docket No. AB-192 (Sub-No.2X)

Dear Ms. Wood:

We have reviewed your submittal regarding the referenced project. Based on the information you provided, we have no objections to the project as presented. Please ensure that the following general requirements are met:

1. The project must comply with the storm water permitting requirements found at <http://www.adem.state.al.us/FieldOps/Permitting/ConstructionProject.pdf>.
2. The project must comply with all applicable Department regulations.

This letter should not be construed as an approval on behalf of any other agency. If you have any questions, please contact me at (334) 271-7796.

Sincerely,

Ron Johnson
SRF, Certification, and General Services Branch
Permits and Services Division



ADEM FIELD OPERATIONS DIVISION

PROPOSED PROJECT/ACTIVITY REVIEW INFORMATION

The ADEM Field Operations Division reviews proposed construction activity projects and provides comments as appropriate. Please note that State law and ADEM regulations require that appropriate, effective Best Management Practices (BMPs) for the control of pollutants in stormwater run-off be fully implemented and maintained as needed for all construction and land disturbance activities regardless of permit status or size of the disturbance to prevent/minimize discharges of sediment and other pollutants to waters of the State of Alabama.

A "water of the state" is broadly defined as [§ 22-22-1(b)(2), Code of Alabama 1975, as amended] "All waters of any river, stream, watercourse, pond, lake, coastal, ground, or surface water, wholly or partially within the state, natural or artificial. This does not include waters which are entirely confined and retained completely upon the property of a single individual, partnership, or corporation unless such waters are used in interstate commerce." Discharges of pollutants resulting from failure to implement and maintain effective BMPs are considered unpermitted discharges to state waters.

Please be advised that pursuant to EPA rules and ADEM Admin. Code Ch. 335-6-12, the operator/owner or applicant is required to register for and maintain valid National Pollutant Discharge Elimination System (NPDES) coverage for stormwater discharges prior to beginning construction or regulated land disturbance that will equal or exceed one (1) acre in size. The regulations also require NPDES registration for disturbance activities less than one (1) acre that are part of, adjacent to, or associated with a larger common plan of development or sale, that may eventually equal or exceed one (1) acre, or if less than one (1) acre in size if stormwater discharges have reasonable potential to be a significant contributor of pollutants to a water of the State or have reasonable potential to cause or contribute to a violation of applicable Alabama water quality standards as determined by the Department, and/or conducting any noncoal, nonmetallic mining and mineral dry processing activity less than five (5) acres in size. The regulated construction disturbance also includes, but is not limited to, associated areas utilized for support activities such as vehicle parking, equipment or supply storage areas, material stockpiles, temporary office areas, and access roads, and pre-construction activities performed in advance or in support of construction such as logging, clearing, and dewatering. Please be advised that a registrant, operator/owner, contractor, or other responsible entity, separately or collectively, must retain NPDES registration coverage until all disturbance activity, including phased construction, is complete.

Additional ADEM air, land, and/or water permits for discharges and regulated impacts resulting from the operation of the completed facility may be required.

Effective Best Management Practices (BMPs), as provided in the *Alabama Handbook For Erosion Control, Sediment Control, And Stormwater Management On Construction Sites And Urban Areas*, as amended, Alabama Soil and Water Conservation Committee (ASWCC), for prevention and control of nonpoint sources of pollutants must be implemented prior to, during, and after project implementation. Immediately after completion of the project, effective measures to ensure permanent revegetation, cover, and/or effective stormwater quality remediation must be implemented and maintained. The rules require that a Construction Best Management Practices Plan (CBMPP) to reduce pollutant discharges to the maximum extent practicable be prepared by a qualified credentialed professional (QCP) [ADEM Admin Code Rule 335-6-12-.02(r)], and retained onsite. Information regarding construction and small noncoal, nonmetallic mining and mineral dry processing sites (ADEM Admin. Code Ch. 335-6-12, forms, and other helpful information) is available at www.adem.state.al.us/FieldOps/Permitting/Construction/Construction.htm

Tennessee River Watershed - In order to determine whether this project should be covered under an existing CWA Section 404, Nationwide, or General Permit, or Letter of Permission, you should contact the U. S. Army Corps of Engineers, Nashville District by mail at PO Box 1070, Nashville, TN 37202-1070 or by phone at (615) 736-5181. Facilities covered under a U.S. Army Corps of Engineers Individual 404 Permit, Nationwide or General Permit, or Letter of Permission must register for NPDES stormwater coverage from ADEM, if construction or land disturbance above the Ordinary High Water Mark, or any non-dredge/fill operations below the Ordinary High Water Mark and associated upland dredge disposal sites that will equal or exceed one (1) acre or that are part of a larger common plan of development or sale in which disturbed acreage will eventually equal or exceed (1) acre.

All Other Alabama Watersheds - In order to determine whether this project should be covered under an existing CWA Section 404, Nationwide, or General Permit, or Letter of Permission, you should contact the U.S. Army Corps of Engineers, Mobile District by mail at PO Box 2288, Mobile, AL 36628-0001 or by phone at (251) 690-2658. Facilities covered under a U.S. Army Corps of Engineers Individual 404 Permit, Nationwide or General Permit, or Letter of Permission must register for NPDES stormwater coverage from ADEM, if construction or land disturbance above the Ordinary High Water Mark, or any non-dredge/fill operations below the Ordinary High Water Mark and associated upland dredge disposal sites that will equal or exceed one (1) acre or that are part of a larger common plan of development or sale in which disturbed acreage will eventually equal or exceed (1) acre.

ADEM's Coastal Program manages uses and activities having the potential to significantly impact the coastal portions of Alabama and/or its resources. The Coastal Area is comprised of only a portion of Mobile and Baldwin counties and is defined as the lands and waters seaward of the continuous ten-foot contour. ADEM issues Coastal Programs Non-Regulated Use Permits for commercial and residential developments greater than 5 acres in size, construction on Gulf-fronting properties intersected by the Construction Control Line, and groundwater wells that exceed 50 gallons per minute of water withdrawal. ADEM also must certify that permits issued by federal and state agencies, and projects conducted by those agencies, are consistent with the Coastal Program. ADEM accomplishes this by reviewing applications for permits submitted to other agencies. Therefore, it is recommended that applicants having development plans, or even considering development in the Coastal Area, consult with ADEM Coastal Program staff as soon as possible in the project development stage so that the applicant can learn of applicable requirements. Questions involving projects in the coastal area should be directed to the ADEM Coastal Office in Mobile.

You may also wish to contact: (1) the U.S. Fish & Wildlife Service and the Alabama Department of Conservation & Natural Resources. These are the Federal and State agencies, respectively, that have primacy and statutory authority to address potential impacts to endangered or threatened species, (2) the Office Of Water Resources, Alabama Department of Economic and Community Affairs, which is the State agency with primacy and statutory authority to address potential water quantity concerns or issues, (3) the State Fire Marshall and the Alabama Department of Industrial Relations which are the State agencies with primacy and statutory authority to address potential safety considerations regarding blasting, (4) the Alabama Department of Industrial Relations which requires permit coverage and reclamation bonding for most non-coal mining sites, (5) the Alabama Historical Commission which is the State agency with primacy and statutory authority to address preservation or potential impacts to surrounding or onsite historical or archaeological sites, (6) your local county health department for issues related to onsite sewage management, and (7) your local municipal or county government, or local zoning and planning agency, if applicable, for additional approvals that may apply to your project.

In recognition that projects are site specific in nature and conditions can change during project implementation, the Department reserves the right to require the submission of additional information or require additional management measures to be implemented, as necessary on a case by case basis, in order to ensure the protection of water quality. Responsibility for compliance with ADEM rules and permit requirements are not delegable by contract or otherwise. The operator/owner must ensure that any agent, contractor, subcontractor, or other person employed by, under contract, or paid a salary by the operator/owner ensures compliance. Any violations resulting from the actions of such person may subject the operator/owner to enforcement action.

ADEM permitting decisions are predicated on current regulatory requirements, established engineering standards and technical considerations, best management practices information, and formal administrative procedures in conformance with Departmental regulations and applicable Alabama law. Issuance of permit coverage by ADEM neither precludes nor negates an operator/owner's responsibility or liability to apply for, obtain, or comply with other ADEM, federal, state, or local government permits, certifications, licenses, or other approvals. ADEM permit coverage does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to persons or property or invasion of other private rights, trespass, or any infringement of Federal, State, or local laws or regulations.

If you have any questions or need additional information regarding construction stormwater permitting, please contact:

ADEM FOD Construction Stormwater Service Areas

